IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
AXMEAR PUMPING, L.L.C. Malcom, Iowa	NO. 2008-AFO-35

TO: George Axmear
Axmear Pumping, L.L.C.
812 Washington Street
Malcom, Iowa 50157

I. SUMMARY

This administrative consent order is entered into between Axmear Pumping, L.L.C. (Axmear Pumping) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge into an unnamed tributary of Prairie Creek near Blairstown, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Rick Martens, Field Office 1
Iowa Department of Natural Resources
909 West Main Street
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Axmear Pumping is a licensed commercial manure applicator service. The company services animal feeding operations by pumping and land applying manure from confinement and open lot operations.

2. On May 12, 2008, DNR Field Office 1 received a complaint stating that the stream behind the complainant's home had turned dark in color from what the complainant believed to be manure entering the stream. The complainant's house is near Blairstown. The complainant stated the manure was coming from a farm field immediately south of Blairstown and that liquid manure was being applied to fields in the area.

3. On May 13, 2008, Tom McCarthy, DNR Field Office 1 environmental specialist senior, and Rick Martens, DNR Field Office 1 environmental specialist, investigated the complaint. They began the inspection at an unnamed tributary to Prairie Creek at the crossing of County Road V66. At this location, the water appeared normal and clear. Mr. McCarthy and Mr. Martens then proceeded approximately one mile south on County Road V66 and continued west on 78th Street. A manure pump and hose were observed in a field on the south side of 78th Street in Section 26. At the crossing of 78th Street and the unnamed tributary, the stream is intermittent and was not flowing. Mr. McCarthy and Mr. Martens observed a pool of water at a roadway culvert that appeared free of manure. Mr. McCarthy walked north along the intermittent stream toward Blairstown through Section 23. Mr. Martens returned to the Highway V66 crossing in Blairstown and along the way he noted that the manure pump observed earlier in Section 26 was now operating. The water at Highway V66 was becoming turbid and dark in color. The field test indicated the presence of ammonia nitrogen. Mr. McCarthy contacted Mr. Martens and stated he had located a field tile outlet to the stream that was discharging. Mr. Martens met Mr. McCarthy at the location. They observed a tile outlet discharging grey colored foamy water that smelled of manure. They conducted field tests and collected laboratory samples from this location. The field tests indicated ammonia nitrogen greater than 3.0 mg/L, water temperature of 50°F and pH 7.7. Mr. McCarthy and Mr. Martens then went 15 feet upstream and conducted field tests and collected laboratory samples. The upstream water was clear, free of foam and odor. The field tests indicated low or no ammonia nitrogen, water temperature of 56°F and pH 8.1. Mr. McCarthy and Mr. Martens went 15 feet downstream and conducted field tests and collected laboratory samples. The downstream water was turbid, smelled of manure, and contained foam. The field tests indicated ammonia nitrogen greater than 3.0 mg/L, water temperature of 50°F and pH 7.8. The results of the laboratory samples indicated the following:

Location	Ammonia Nitrogen	Total Suspended Solids
At the Tile Discharge	12 mg/L	110 mg/L
Upstream of the Tile Discharge	0.47 mg/L	4 mg/L
Downstream of the Tile Discharge	10 mg/L	93 mg/L

4. Mr. McCarthy and Mr. Martens proceeded to the Cedar Valley Farms facility, located at 2188 78th Street; Blairstown, Iowa. They met with the facility manager, Leon Tellinghaisen, and he stated that Cedar Valley Farms hired Axmear Pumping to pump liquid confinement dairy manure from the lagoons at the facility to nearby farm fields. Mr. Tellinghasien stated that the pumping of manure began on May 12, 2008. Mr. Tellinghasien explained that the manure was being pumped through a dragline system and incorporated using an AerWay system. A series of four manure pumps were needed to maintain pressure to the dragline. Mr. McCarthy, Mr. Martens, and Mr. Tellinghaisen then followed the dragline from the facility to the application fields.

5. At the 78th Street Bridge, the group observed the portable manure pumping station. It was not operating, but two Axmear Pumping employees were present. John Cook, one of the employees, stated that the dragline hose had several leaks during recent operations. He stated the leaks were repaired and he was unaware of any manure reaching the unnamed tributary to Prairie Creek. Mr. Cook stated the pumping had begun on May 12, 2008 for about an hour and then again on the morning of May 13, 2008. The pumping had stopped for the dragline repair. Mr. McCarthy and Mr. Martens observed small amounts of manure in the field and field tests of standing water in the field indicated the presence of ammonia nitrogen.

6. Mr. McCarthy, Mr. Martens, and Mr. Tellinghaisen continued to follow the dragline hose and entered a field operated by Don Tiedemann in Section 23. Approximately a half mile into the field, the group observed an area approximately 80 yards long by 10 yards wide that was heavily covered with liquid manure. A section of the hose was near the operating hose and a manure pump. There was a small amount of standing liquid manure and it was evident that the liquid manure from the area had entered a waterway on property owned by James Harrington. Mr. Martens followed the manure trail and located a hole where the discharge drained into. The grass around the hole was matted with manure and the area had a strong manure odor. Mr. McCarthy, Mr. Martens, and Mr. Tellinghaisen inspected the waterway hole and observed several clay tile fragments and at about the depth of one foot, a four inch clay tile line was located. The tile line contained clear flowing water and the field tests indicated no ammonia nitrogen was present. The flow from the manure spill site had entered the hole to the tile line but during the field office's observations, the manure flow was not active. Mr. Martens collected laboratory samples of the pool of standing discharge in the waterway immediately up-gradient of the hole. The laboratory samples indicated the following:

Location	Ammonia Nitrogen	Total Suspended Solids
Above the Clay Tile Break	370 mg/L	26,000 mg/L

7. Mr. Tellinghaisen then contacted George Axmear with Axmear Pumping. Mr. Axmear and several employees arrived shortly after being called and Mr. Axmear was unaware that the spill had entered the tile line. The field office personnel instructed Mr. Axmear to prevent further discharge and to clean the spill area. Mr. Axmear stated he would

install an earthen dike to protect the waterway and incorporate the manure in the spill area. He estimated that 5,000 gallons of liquid manure had been discharged at the site.

8. On May 14, 2008, Mr. Martens returned to the site and observed that the stream was running clear. The field tests did not indicate the presence of ammonia nitrogen and Mr. Martens did not observe any dead fish. Mr. Martens met with Mr. Cook to discuss the spill. Mr. Cook stated that there had been five or six leaks to the dragline during the previous three days. He stated the initial manure spill had occurred on the afternoon of May 12, 2008 and the replacement hose had leaked in the same area again during the morning of May 13, 2008. Mr. Cook estimated that the hose tore three to six inches on May 13, 2008, releasing approximately 5,000 gallons of liquid manure on previously manure soaked ground. He stated that he was aware that liquid manure had entered the waterway but thought the grassed waterway would protect the stream. He did not monitor the manure spill to determine if the manure had reached the stream. Mr. Cook stated that Mr. Axmear was aware of the manure spills on May 12 and May 13, 2008.

9. On May 27, 2008, Axmear Pumping was issued a Notice of Violation letter for the violations discovered during the manure spill inspection. The violations included: prohibited discharge, water quality violations, and minimum manure control violations. The letter required Axmear Pumping to submit a written spill report within 30 days. The letter informed Axmear Pumping that legal action was under evaluation. The written spill report was submitted on June 3, 2008.

10. Axmear Pumping has had two reported releases in the past due to equipment failure. In October 2004, a manure application hose broke on a county dirt road about 1,000 feet north of Prairie Creek. Approximately 1,000 to 1,500 gallons of manure was spilled; however the manure did not enter Prairie Creek. In April 2007, a hole in a manure application hose caused a manure leak in a road ditch about 1,000 feet south of Prairie Creek. Only a small amount of manure was released and the manure did not enter Prairie Creek.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 1 found evidence of the discharge of untreated pollutants into a water of the state. The above-facts indicate a violation of this provision.

2. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

3. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. The spill from Axmear Pumping resulted in water quality violations. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR Field Office 1 observed liquid manure that had entered a water of the state. The field office personnel observed the unnamed tributary of Prairie Creek was turbid, dark in color and had a manure odor. The laboratory results indicated high levels of ammonia nitrogen and total suspended solids. The above-facts disclose a violation of one or more of these criteria.

5. 567 IAC 65.2(9)"a" provides that a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of release shall notify the DNR of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. Axmear Pumping failed to notify the DNR of the releases on May 12 and May 13, 2008. The above-facts disclose a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Axmear Pumping agrees to do the following:

1. Axmear Pumping shall pay a penalty of $5,000.00 to the DNR within 30 days from the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorize the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is $5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Axmear Pumping employees stated that the company had several equipment malfunctions on May 12 and May 13, 2008. Axmear Pumping saved time and

money by not properly repairing or replacing the equipment. Axmear Pumping was able to avoid any delay by not properly repairing or replacing the equipment. Based on the above factors, $750.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. There was a release of manure that caused water quality violations. The manure in the stream also reached the city of Blairstown, Iowa. Axmear Pumping's failure to notify the DNR of the release prohibited the DNR from being able to minimize the impact of the discharge. Based on the above considerations, $2,250.00 is assessed for this factor.

Culpability – All commercial manure services have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Axmear Pumping failed to notify the DNR of the release and failed to take steps to monitor the stream or the manure discharge. Based on the above considerations, $2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Axmear Pumping. For that reason, Axmear Pumping waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 6 day of Nov., 2008.

George Axmear
AXMEAR PUMPING, L.L.C.

Dated this 22 day of Oct, 2008.

#1213CMS; DNR Field Office 1; Kelli Book; Gene Tinker; EPA; VIII.D.3